Office of Chief Counsel
Internal Revenue Service
memorandum

CC:SB:SWatson
GL-146493-04

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to: Cheryl Sherwood
Director, Payment Compliance

from: Miriam A. Howe   *Miriam A. Howe*
Assistant Division Counsel-General Litigation
(Small Business/Self-Employed)

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ct: Timely Release of Filed Notice of Federal Tax Lien- Remittance by Personal Check

This memorandum responds to your request for advice dated August 20, 2004.

ISSUE

Whether the Internal Revenue Service (IRS) may wait fifteen calendar days from receipt of a personal check before deeming the liability paid, and whether the thirty-day period within which it must release its lien commences at that time, or when the taxpayer remits a personal check.

CONCLUSION

The IRS has discretion to determine whether a certain payment has fully satisfied the assessed liability, and has 30 days from the date of that determination to issue a certificate of lien release. The IRS has made a reasonable determination that a period of fifteen days is necessary to ensure that the check clears before deeming the liability paid. The thirty-day period governing lien releases begins to run as of the end of the fifteen day period.

LAW AND ANALYSIS

I.R.C. § 6325(a)(1) requires the Secretary to issue a certificate of release of any lien imposed with respect to any internal revenue tax not later than 30 days after the day on which—

> (1) Liability Satisfied or Unenforceable—The Secretary finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable;

The Secretary must also release the lien if it accepts a bond. Pursuant to the terms and conditions of payment set forth in regulations, the IRS may receive payment for any internal revenue taxes by any commercially acceptable means. I.R.C. § 6311 contemplates payment of taxes by check since it provides in subsection (b) that: if "any check, money order or other method of payment, including payment by credit card, debit card, or charge card so received is not duly paid, or is paid and subsequently charged back to the Secretary," the taxpayer will be liable as if the check had not been tendered. See IRM 3.8.44.4.2. Pursuant to section 6325, the IRS then exercises its discretion to determine whether the liability has been fully satisfied in situations where the tax liability is being paid by commercially acceptable means other than legal tender.

The IRS requires immediate release of liens in situations where the taxpayer has paid taxes by cash, certified check, or cashier's check. IRM 5.12.2.4(3). The IRS also may release a lien immediately when the liability is satisfied by money order or guaranteed draft. IRM 5.12.2.1(4). In those cases, the lien is released without waiting for expiration of the statutory thirty-day period. Any policy decision to permit release of liens, however, can and should be based on the risk of dishonor inherent in the type of payment. An erroneously-released IRS lien may result in loss of priority against purchasers, holders of a security interest, mechanic's lienors, or judgment lien creditors pursuant to I.R.C. § 6323(a), significantly decreasing the collection potential for that liability. Therefore, it is both prudent and permissible for the IRS to provide a period of time to allow a personal check to clear before determining that the liability has been satisfied and setting the lien release process in motion.

The IRS may set a reasonable time limit within which a personal check may be expected to clear. Fifteen calendar days is a reasonable time based on bank clearing rules and IRS internal procedures. When that period has passed, the IRS at that time may properly deem the liability "fully satisfied" as envisioned by section 6325(a)(1). The IRS then has thirty days from the expiration of that period to release the lien in compliance with the statute, if the check is not returned as dishonored or otherwise unpaid.

DP

Please call Susan Watson at (202) 283-7669 if you have any further questions.